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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/529,653	06/26/2000	Yong Zou	8737-000007	8304

7590 03/27/2002
Harness Dickey & Pierce
PO Box 828
Bloomfield Hills, MI 48303

EXAMINER

WALLS, DIONNE A

ART UNIT	PAPER NUMBER
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1731

DATE MAILED: 03/27/2002

12

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/529,653

Applicant(s)

ZOU ET AL.

Examiner

Dionne A. Walls

Art Unit

1731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12-11-2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over JP 8266261 (Abstract).

JP 8266261 discloses a cigarette having a main body and a filter attached integrally to an end of the main body, said filter comprising dried and crushed ginkgo leaves (see abstract). By providing a cigarette filter formed of ginkgo leaves, a cigarette comprising ginkgo leaves "as its burnable material" is obviously provided because a filter can be considered "material" that is included in a conventional cigarette, and said ginkgo leaves, being plant material, are obviously "burnable".

3. Claims 1 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buchmann et al (US. Pat. No. 3,820,548).

Buchmann et al teaches that a cigarette can be produced having a tobacco substitute which comprises non-woody parts of trees, shrubs, plants, etc. Specifically, the leaves of trees are disclosed as being suitable material for said tobacco substitute (col. 2, lines 57-67; col. 4, lines 13-15; see abstract). While Buchmann et al may not specifically disclose ginkgo leaves as the burnable material for its tobacco substitute, it does disclose that the substitute of its invention can be derived from a wide variety of

Application/Control Number: 09/529,653
Art Unit: 1731

plant types as long as the part used as the substitute contains little wood (col. 4, lines 4-7). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to employ ginkgo leaves as a tobacco substitute because said leaves are the non-poisonous, non-woody parts of the ginkgo biloba tree which would provide the smoker with a product that is free from the detrimental components of tobacco – which is the goal of Buchmann et al (col. 1, lines 21-23).

Regarding claim 3, while there may be no articulation that the cigarette would contain 100 wt % ginkgo biloba leaves, Buchmann et al states that the plants which are used can be selected in order to provide desired agents in the tobacco smoke (col. 3, lines 16-18). This would suggest to one having ordinary skill in the art to utilize the leaves in a weight percentage that would allow for a specific desired affect for the smoker, i.e. reduced appetite, modification of circulation, pursuant to the teachings of Buchmann et al (col. 3, lines 18-19). It would have been obvious to one having ordinary skill in the art at the time of the invention to incorporate 100% ginkgo leaves in order to ensure that the smoker will appreciate the full benefits of the non-toxic, tobacco substitute.

Response to Arguments

4. Applicant's arguments filed on December 11th, 2001 have been fully considered but they are not persuasive.

- Applicant argues that nothing in the JP 8266261 reference discloses, teaches or suggests the incorporation of ginkgo leaves as the burnable material; however, the examiner disagrees. See paragraph 2, above.

Application/Control Number: 09/529,653
Art Unit: 1731

- The examiner notes that Applicant has amended claim 2; however, this claim was cancelled by Preliminary Amendment A. Therefore, the Amendment was not entered, or considered.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dionne A. Walls whose telephone number is (703) 305-0933. The examiner can normally be reached on Mon-Fri, 7AM - 4:30PM (Every other Friday off).

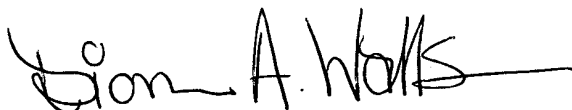
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley S. Silverman can be reached on (703) 308-3837. The fax phone

Application/Control Number: 09/529,653

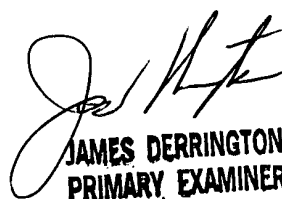
Art Unit: 1731

numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0661.



Dionne A. Walls
March 22, 2002



JAMES DERRINGTON
PRIMARY EXAMINER
ART UNIT 137-1731